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Eleanor Swift's Indelible Public Interest Legacy at Berkeley Law

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INTRODUCTION

Law professors can leave their mark in many ways—on ideas, on people, and on institutions. We try to advance legal thought and practice in our writing. Through our teaching, we hope to influence students in the classroom and improve the profession. A handful of law professors actually change their institutions.

Professor Eleanor Swift has left her mark in all of these ways. This volume describes her scholarly contributions in the field of Evidence.¹ Most of our students and alumni know and revere Professor Swift as an extraordinary teacher.² And Professor Swift courageously led the fight to diversify the faculty

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1. See David S. Schwartz, *An Excess of Discretion? "Thayer's Triumph" and the Uncodified Exclusion of Speculative Evidence*, 105 CALIF. L. REV. __ (forthcoming 2017). Professor Swift has published widely in the field of evidence, including coauthoring an Evidence casebook and contributing to the leading treatise, MCCORMICK ON EVIDENCE.

2. Her teaching is legendary. See Matt Kline, *The Best Lesson: A Tribute to Eleanor Swift*, 105 CALIF. L. REV. __ (forthcoming 2017). Fortunately, her dedication to the classroom and our students did not go unnoticed. In 1998, Professor Swift received the law school's Rutter Award for Teaching Distinction. In 2000, she became just one of a very small number of Boalt professors ever to receive the University's prestigious Distinguished Teaching Award.

and open doors for so many others at Boalt Hall.³ Looking back on a career, these accomplishments would be more than enough to celebrate in a festschrift.

People are less likely to know, however, about Professor Swift's singular role in building the law school's public interest program. I have had the privilege of working closely with her since I arrived at Berkeley in 1990. It is a special honor to have the opportunity to share a few reflections about her public interest legacy at Berkeley Law.

Berkeley Law's public interest program is comprised principally of an experiential education program, which includes our clinical, skills, and field placement offerings, as well as a social justice program known as the Thelton E. Henderson Center for Social Justice. Current students and recent alumni may think these vibrant programs have always existed, but in truth they have become institutionalized only in the last generation. And Professor Swift was a moving force behind all of them.

I.

THE ARCHITECT OF EXPERIENTIAL EDUCATION

When Professor Swift arrived at Berkeley in 1979, the law school did not really have an experiential education program. In spite of receiving seed funding from the Ford Foundation in the late 1960s to start a clinical program, by the mid-1970s the law school did not provide clinical or field placement opportunities to students.⁴ The school offered some trial advocacy classes—mostly simulation courses taught by practitioners—but it did not have a formalized program of hands-on instruction to prepare students for practice and the profession.⁵

Like their peers at other law schools, Berkeley Law students were clamoring both for more practical experience and to engage with the pressing

3. See Eleanor Swift, *Better Than Going to Court? Resolving a Claim of Discrimination Through a University's Internal Grievance Process*, 29 BERKELEY J. GENDER L. & JUST. 340 (2014) (describing the gender discrimination grievance she filed against the law school, which resulted in the reversal of her tenure denial, because "it was the right thing to do for future women faculty and students and for the School of Law itself").

4. The modern clinical movement dates to the late 1960s and early 1970s when the Ford Foundation supported experiential education programs at select law schools across the country. Rebecca L. Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 75–78 (2009) (describing the modern clinical legal education movement). Berkeley was one of the original recipients of Ford Foundation support and operated a small clinical program until the funding ended in the 1970s.

5. Professor Stephen Sugarman recruited many of the practitioners and also helped to create a short-lived employment discrimination clinic in the 1980s run by Professor David Oppenheimer, who rejoined the faculty in 2009 as the first full-time Director of Skills. Professor Carolyn Patty Blum directed an Immigration Law and Asylum Appeals Clinic for several years in the mid-1980s that was the precursor to the International Human Rights Law Clinic. The school also offered several "practitioner-supervised clinicals" and judicial externships—precursors to the field placement program—overseen by Assistant Dean Sue Ann Schiff.

issues in the world beyond campus.⁶ In response to the dearth of clinical education and cuts to civil legal aid programs, students founded the Berkeley Community Law Center in the fall of 1988.⁷ On a shoestring budget, the founders designed the law center (now the East Bay Community Law Center (EBCLC)) with a simple mission—to train law students and to provide free legal services to low-income clients.

Although the law school did not initially provide funding for EBCLC, it permitted students to enroll in the clinic for academic credit. Professor Stephen Sugarman served as an early faculty advisor to the students and helped the clinic obtain financial support from the U.S. Department of Education (DOE). The DOE grant encouraged direct faculty involvement in a clinic companion seminar.⁸ When Professor Swift returned to the law school in 1989, Professor Sugarman invited her to coteach the course.⁹

Two years later, Dean Herma Hill Kay appointed Professor Swift to chair a special committee charged with developing a proposal to expand and improve Berkeley's experiential education curriculum. In 1996, after several years of consultation and study, the committee authored a sweeping blueprint for the infrastructure and programs that we now take for granted.¹⁰ The so-called "Swift Report" made several key recommendations to the faculty regarding clinical, field placement, and skills offerings.

First, the Swift Report urged the law school to formalize its relationship with EBCLC, including more robust funding and closer academic ties.¹¹ Second, the report proposed establishing an in-house Center for Clinical Education within the law school itself. Third, the report recommended appointing both a director to administer a field placement program and a director to develop a skills program.

Fast forward twenty years—what came of the Swift Report? The short story is that over time, and with a lot of hard work by Professor Swift and others, the law school adopted all of the report's key recommendations. In fact, Berkeley now boasts one of the most well rounded set of experiential offerings of any law school in the country, all envisioned by Professor Swift.

6. For a discussion of the modern clinical legal education movement, including student pressure for law schools to establish clinics, see Sandefur & Selbin, *supra* note 4, at 75–78.

7. *Boalt Celebrates New Poverty Law Center: Law Students Raised the Money Themselves*, RECORDER, Sept. 29, 1988, at 8. The student-founded Berkeley Law Foundation funded the center's first staff attorney, 1988 Boalt graduate Brad Adams.

8. Boalt Hall graduates and legal aid lawyers Kathryn Seligman and Stephen Rosenbaum cotaught the first EBCLC companion course in 1988.

9. When Dean Jesse Choper permitted two full professors to coteach the companion seminar each semester for several years, it was a tacit endorsement of the importance of clinical education generally and the community clinic in particular.

10. Other key faculty members on the committee included Professors Joseph Sax and Jan Vetter.

11. At the time, EBCLC was training approximately two dozen Boalt students each year in exchange for law school support of \$50,000 on an annual budget of \$600,000.

Here is a quick snapshot:

EBCLC: In the wake of the Swift Report, the law school strengthened and deepened its partnership with EBCLC, to the great benefit of both institutions.¹² EBCLC now trains more than one hundred law students each year, who in turn serve thousands of low-income clients in eight clinics, ranging from critical bread-and-butter civil legal aid services like housing and welfare to cutting-edge clinics in community reentry and economic development.¹³ Today, EBCLC is the law school's largest single clinical offering and the largest provider of free legal services in the East Bay.

In-House Clinics: In response to the Swift Report, the law school created the Center for Clinical Education, hired its first director, and established three in-house clinics: the International Human Rights Law Clinic in 1998, and the Death Penalty Clinic and the Samuelson Law, Technology & Public Policy Clinic in 2001.¹⁴ The law school expanded the in-house program in 2015, adding the Policy Advocacy Clinic and the Environmental Law Clinic. With eight faculty members and five clinical teaching fellows, the in-house clinics now train more than one hundred students each year, serving local, national, and global clients.

Field Placement Program: Shortly after the Swift Report, the law school hired a part-time director to build the field placement program.¹⁵ In response to program growth and development, the law school hired a full-time director in 2006.¹⁶ The program now supports 175 students each year in a range of local nonprofit civil and criminal law placements, judicial placements, and away placements in Washington, D.C. and internationally.

Skills Program: The final Swift Report recommendation came to fruition in 2009 with the hiring of a full-time director of the skills program.¹⁷ The new director increased the number and type of skills

12. For more on EBCLC, see E. BAY COMMUNITY L. CTR., <http://ebclc.org> [<https://perma.cc/3K7B-E22W>].

13. EBCLC's eight clinics include the Clean Slate Clinic, the Consumer Justice and General Clinic, the Green-Collar Communities Clinic, the Education Advocacy Clinic, the Youth Defender Clinic, the Health and Welfare Clinic, the Housing Clinic, and the Immigration Clinic.

14. The law school hired Professor Charles Weisselberg as the founding director of the Center for Clinical Education. For more on the Berkeley Law clinical program, see *Clinical Program*, BERKELEY L., <https://www.law.berkeley.edu/experiential/clinics/>.

15. For more on the Berkeley Law field placement program, see *Field Placement Program*, BERKELEY L., <https://www.law.berkeley.edu/experiential/field-placement-program> [<https://perma.cc/E3KQ-RLSH>].

16. The law school hired Lecturer in Residence Susan Schechter as the first full-time director of the field placement program.

17. The law school hired Professor David Oppenheimer as the first director of the Skills Program. For more on the Berkeley Law skills program, see *Professional Skills Program*, BERKELEY L., <https://www.law.berkeley.edu/experiential/professional-skills-program> [<https://perma.cc/M3EX-RQE9>].

offerings and significantly improved the quality of the skills curriculum. More than two hundred second- and third-year students now enroll each semester in a wide array of courses designed to introduce the theory and practice of lawyering.

No one at Berkeley Law contributed more to the creation of a first-rate experiential education program than Professor Swift. But remarkably, this is only one part of her public interest legacy at Berkeley. Professor Swift also played a central role in organizing one of the school's most important and enduring responses to restrictions on our ability to admit a diverse student body.

II.

A CHAMPION OF SOCIAL JUSTICE

Before the ink was dry on the Swift Report, the law school faced a grave threat to its public mission. In November 1996, California voters passed Proposition 209, which followed the adoption of a similar policy by the University of California Regents (UC Regents) a year earlier and effectively ended affirmative action at the university. Proposition 209 had an immediate and dramatic impact on the enrollment of underrepresented minorities at the law school. Because Proposition 209 prohibited the school from considering race or ethnicity as a factor in the admissions process—and many students of color felt unwelcome by the actions of the UC Regents—a single African American student enrolled in an entering class of 268 students in the fall of 1997.¹⁸

While many took the view that there was nothing the law school could do in the face of this direct and devastating assault on diversity, Professor Swift organized a response. With Berkeley Law Professors Angela Harris and Rachel Moran, she founded the Center for Social Justice (now the Thelton E. Henderson Center for Social Justice (Henderson Center)).¹⁹ Professor Swift wore many hats during the center's development. Together, Professors Swift, Harris, and Moran persuaded the law school administration and the Berkeley campus to launch, fund, and staff the Center. She helped develop programming, and she has served on the Center's faculty executive committee since its inception.

18. Eric Brooks, whom I had the great pleasure of teaching, was the sole African American student who enrolled in 1997. As Mr. Brooks himself has noted, he was admitted the previous year and deferred admission, meaning the law school did not enroll a single African American student admitted in the first year after the passage of Proposition 209. Eric Brooks, *A "Critical Mass" of One: A Personal Perspective on Affirmative Action and Grutter v. Bollinger*, 1 MINORITY TRIAL LAW., Summer 2003, at 1, 1, 9.

19. For more on the Thelton E. Henderson Center for Social Justice, see *Thelton E. Henderson Center for Social Justice*, BERKELEY L., <https://www.law.berkeley.edu/research/thelton-e-henderson-center-for-social-justice> [<https://perma.cc/8VYQ-ZQDW>].

The Henderson Center fosters challenging conversations at the law school about power, privilege, race, gender, and class. The Center brings prominent practitioners, alumni, and activists to expose students to a broad range of social justice issues, ideas, and skills. In collaboration with other student groups and community networks, the Center plays an important role in encouraging students of color to apply to and attend Berkeley Law by conveying the school's commitment to racial justice.

Law school faculty, students, and alumni have taken other actions to address the harmful impact of Proposition 209, and Berkeley Law is a much more equitable and inclusive place thanks to these efforts. But the work is far from complete, and Professor Swift has never wavered in her commitment to the Henderson Center's vital role in advancing justice for students, staff, faculty, and the community. Thanks to Professor Swift's vision and perseverance, the Henderson Center is the vibrant heart of the law school's commitment to fulfilling the nation's promise of equality for all.

III.

A PUBLIC INTEREST WARRIOR

Berkeley, like many academic institutions, operates through a model of shared governance. While the Dean controls significant resources, the faculty plays a key decision-making role on curricular matters, such as experiential education. While this system has its strengths, the law school can be a very difficult place to make change, and progress can be slow and fleeting.

In this context, it is important to note that Professor Swift was not just the architect of the law school's key public interest programs—she fought to bring them to fruition. She served as Associate Dean of the Faculty from 1998 to 2000 under Dean Kay, helping to implement many of the recommendations in the Swift Report. She chaired or participated actively on every major committee dealing with the social justice and experiential learning programs. In other words, Professor Swift did much of the heavy institutional lifting to operationalize this ambitious agenda.

Professor Swift steadfastly supported a closer and deeper relationship between the law school and EBCLC. She wrote innumerable memos to the Berkeley Law faculty and the EBCLC staff and board about budget and fundraising matters, teaching methods, and affiliation issues. Every intervention aimed to make both institutions better. And the formal documents were only the tip of the iceberg—Professor Swift was often behind the scenes cajoling her colleagues and the law school administration through gentle but persistent persuasion.

Professor Swift also rolled up her sleeves to do the work herself. She helped EBCLC raise critical funding in its early and uncertain years, including a major, multiyear grant that stabilized EBCLC's finances and laid the groundwork for financial support directly from the law school. She helped

negotiate a significant gift to EBCLC from a noted alumnus, which involved a complicated funding mechanism and sensitive institutional politics.

Professor Swift was there, in the trenches, developing the EBCLC companion seminar. She worked tirelessly with Professor Sugarman to construct a course that would provide students with theoretical grounding to complement and leverage their substantive training and practice. For the two decades I was later involved in teaching the seminar, we used the core structure and content that they developed in the early years.

Professor Swift also fought for all experiential faculty—adjuncts, legal writing instructors, lecturers, and clinicians alike—to be treated more equitably by the law school and the university. She pushed for better pay, more secure contracts, and greater levels of participation in faculty governance. Professor Swift waged similar battles on behalf of the Henderson Center to increase the status and job security of its leadership, to secure resources for its programming, and to establish a social justice certificate.²⁰

To be clear, these were not efforts that won Professor Swift any special favor within the law school or on the larger campus—she took them on because she believed they were the right thing to do, and so many of us are in her debt.

CONCLUSION

As should be obvious from these examples, the current public interest infrastructure at Berkeley was not built overnight. Professor Swift played the long game of institution-building for several decades. Throughout this time, she was always bullish about the potential to make change and clear-eyed about the obstacles we faced. She was the first person to beam with joy when we made progress, and the first person to comfort others when things didn't go our way.

A few years ago, I asked Professor Swift why she devoted so much of her time and talent to these endeavors, especially since they did nothing to advance her own career. She said that social justice and public service brought her to law school in the first place and drew her to teaching in particular. "Opening doors and creating opportunities for students to contribute to the greater good," she said, has been her passion.

Indeed, thousands of students have passed through one or more of the programs that Professor Swift helped to create, build, and sustain. In these settings, they have learned to be better lawyers and better people. They have provided legal services to underserved individuals, groups, and causes, and they have given content to the law school's public mission to solve real-world problems and create a more just society.

20. Professor Swift was a coauthor of the first attempt to create a public interest and social justice certificate program some eighteen years before it was approved by the faculty in 2015. For more on the public interest and social justice certificate program, see *Public Interest and Social Justice Certificate*, BERKELEY L., <https://www.law.berkeley.edu/research/thelton-e-henderson-center-for-social-justice/public-interest-and-social-justice-certificate> [https://perma.cc/2VFR-AH36].

In a fitting tribute to her passion—and extraordinary contributions—the law school established the Eleanor Swift Public Service Award in 2012. The school presents the award to one or more deserving students, staff, or faculty members at the annual Public Interest and Pro Bono Graduation. With characteristic humility, Professor Swift will tell you that she did not do this alone. While that is true, it is difficult to imagine where we would be without her more than three decades of vision, leadership, and hard work. We can all count ourselves among the lucky beneficiaries of Eleanor Swift's indelible public interest legacy at Berkeley Law.